

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

GREGORY CRAWFORD,

Plaintiff,

VS.

CONESTOGA-ROVERS & ASSOCIATES,
INC.

Defendant.

CIVIL ACTION NO. 3:13-cv-00393-P

**DEFENDANT CONESTOGA-ROVERS & ASSOCIATES’
RESPONSE TO PLAINTIFF’S MOTION TO STRIKE**

DEFENDANT CONESTOGA-ROVERS & ASSOCIATES, INC. (“CRA”) files this response to Plaintiff’s Motion to Strike its Notice of Rejection of Rule 68 Offer of Judgment (“the Motion”), and respectfully shows the Court as follows:

I. INTRODUCTION AND PROCEDURAL HISTORY

1. This is an employment discrimination suit in which Plaintiff contends that Defendant CRA discriminated against him because of his disability. CRA, on the other hand, contends that Plaintiff is not “disabled” because he cannot perform the essential functions of his position with or without a reasonable accommodation.

2. On or about September 20, 2013, CRA made an offer of judgment pursuant to FED.R.CIV.P. 68. CRA inadvertently filed this offer with the Court and it has agreed that this filing (*Dkt 15*) should be struck.

3. On September 25, 2013, Plaintiff notified CRA that he was rejecting CRA’s offer of judgment. Thus, on that day, CRA filed a Notice of Rejection of Offer of Judgment. (*Dkt. 16*).

4. This filing did not disclose any “settlement” negotiations between Plaintiff and

CRA; rather, it merely placed the Court on notice that an Offer of Judgment made pursuant to Rule 68 had been rejected.

II. DEFENDANT'S RESPONSE TO MOTION TO STRIKE

1. As a preliminary matter, CRA notes that it does not oppose the Court's striking Defendant's original filing of its Rule 68 Offer of Judgment (*Dkt. 15*). Had Plaintiff limited his Motion to this item, there would be no need for this matter to be before the Court.

2. However, CRA does object to striking the Notice of Rejection (*Dkt. 16*). As the Court is aware, Plaintiff's act of rejecting a Rule 68 offer has a potential impact upon his ability, if any, to recover attorneys' fees and costs under the ADA.

3. Specifically, "a civil rights defendant is not liable for attorney's fees incurred after a pretrial settlement offer, where the judgment recovered by the plaintiff is less than the offer." *Bogan v. City of Boston*, 432 F.Supp.2d 222, 235 (D. Mass. 2006), citing *City of Riverside v. Rivera*, 477 U.S. 561, 580 (1986).¹

4. In other words, CRA contends that Plaintiff's rejection of CRA's Rule 68 offer creates a "cut-off" date, after which Plaintiff cannot recover attorneys' fees, even if the Plaintiff otherwise prevails but for an amount less than that stated in the rejected Offer of Judgment.

5. Therefore, the Court is entitled to be aware of the rejection.

6. Defendant's filing of the Notice of the Rejection merely serves to inform the Court of this potential "cut-off" date; nothing more. CRA has not disclosed any confidential settlement communications by this filing, nor has Plaintiff been prejudiced by it.

7. Thus, as to the Notice of Rejection (*Dkt. 16*), Plaintiff's Motion to Strike should be denied.

¹ There is no Fifth Circuit law directly on point; thus, CRA looks to other circuits on this item.

III. PRAYER AND CONCLUSION

WHEREFORE, Defendant CRA prays that the Court deny Plaintiff's Motion as to the Notice of Rejection, deny Plaintiff's request for fees, and grant CRA any further relief to which it may be justly entitled.

DATED this 6th day of November, 2013.

Respectfully submitted,

JACKSON WALKER L.L.P.

/s/ Lionel M. Schooler

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CERTIFICATE OF SERVICE

This is to certify that on this 6th day of November, 2013, a true and correct copy of the foregoing Response to Plaintiff's Motion to Strike Notice of Rejection of Rule 68 Offer of Judgment was served via fax transmission and via certified mail, return receipt requested, upon Counsel for Plaintiff, Ms. Jane Legler Byrne, Esq. (SBN 03565820), Neill & Byrne, PLLC, 2214 Main Street, Dallas, Texas 75201.

/s/ Lionel M. Schooler

LIONEL M. SCHOOLER